IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1360 OF 2005
IN
FIRST APPEAL NO.83 OF 2006

Municipal Corporation of
Gr. Mumbai & Anr. ...Applicants
Vs.
Shanti Builders ...Respondents

Mr A.Y. Sakhare alongwith J.J. Xavier for the Applicants.
Mr R.T. Walawalkar alongwith Mr S.G. Karandikar for the Respondent.

CORAM : A. S. OKA, J.
DATE : MARCH 18, 2006.

P.C.:

1. Rule. The Respondent waives service. Taken up for hearing forthwith. The operative part of the impugned Order reads thus:

". The Misc. Notice No.190 of 2004 in Municipal Appeal No.93 of 1999 is made absolute.

. The order dated 18th June, 2001 passed in Municipal Appeal No.93 of 1999 stands modified as follows:-

. The appeal is allowed with usual costs. The order of the Investigating Officer fixing rateable value to Rs.7,81,260/- w.e.f. 01st April, 1997 stands to be set aside and substituted as follows:

. The rateable value of the appeal

property of R.S. Ward No.653(10) is fixed to Rs.18,110/- w.e.f. 01.04.1997.

. Excessive amount deposited or paid towards the taxes by the Appellants are to be paid over to the Appellants/Applicants and not to be adjusted towards the future taxes."

The prayer is for stay of the execution and implementation of the impugned Judgment and Order. So far as setting aside the order of the Investigating Officer is concerned, stay cannot be granted as that will amount to passing final order in Appeal. The question of stay will have to be considered only in so far as direction given by the learned Chief Judge of the Small Causes Court to refund the excess amount of taxes to the Respondent. Shri Sakhare, learned senior counsel appearing for the Applicant pointed out the second proviso to sub-section 5 of Section 217 of the Bombay Municipal Corporation Act, 1888. Shri Walawalkar appearing for the Respondent submitted that the Respondent was forced to pay the amount as per the demand as without the deposit of the amount the Appeal would not have been entertained. He submitted that as this Appeal is in the nature of Second Appeal and as the Respondent has succeeded in the Appeal, the order of refund cannot be stayed.

2. I have considered the submissions. The second proviso to sub-section 5 of section 217 of the said Act of 1888 lays down the manner in which excess amount recovered by the Applicant-Corporation is to be refunded in case the Appeal preferred by the assessee under section 217 of the said Act of 1888 is allowed. The proviso says that excess amount recovered on account of property tax will be adjusted with the interst at the rate of 6.25 per cent per annum from the date on which the amount is deposited with the Corporation towards the property taxes payable thereafter.

3. In my view, the Applicant-Corporation will have to abide by the proviso and implement the same till the final disposal of the Appeal.

4. Hence, I pass the following order:

. The Application for stay is rejected. However, instead of refunding the excess amount paid by the Respondent, the Applicant No.1-Corporation will make adjustment as provided in the second proviso of sub-section 5 of section 217 of the Bombay Municipal Corporation Act, 1888.

JUDGE